

UTAH NATIONAL GUARD AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill makes changes to the Utah National Guard statutes.

Highlighted Provisions:

This bill:

- updates references and language in the Utah National Guard statutes;
- provides that the adjutant general of the Utah National Guard is the commanding general of the Utah National Guard;
- repeals the Utah Code of Military Justice and adopts the federal Uniform Code of Military Justice; and
- makes technical and conforming corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

39-1-1, as last amended by Laws of Utah 2010, Chapter 324

39-1-3, as last amended by Laws of Utah 1989, Chapter 22

39-1-12, as last amended by Laws of Utah 2011, Chapter 115

39-6-4, as enacted by Laws of Utah 1988, Chapter 210



28 **39-6-113**, as last amended by Laws of Utah 2015, Chapter 70

29 REPEALS AND REENACTS:

30 **39-6-114**, as last amended by Laws of Utah 2015, Chapter 70

31 REPEALS:

32 **39-6-66**, as enacted by Laws of Utah 1988, Chapter 210

33 **39-6-67**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9

34 **39-6-68**, as enacted by Laws of Utah 1988, Chapter 210

35 **39-6-69**, as enacted by Laws of Utah 1988, Chapter 210

36 **39-6-70**, as enacted by Laws of Utah 1988, Chapter 210

37 **39-6-71**, as enacted by Laws of Utah 1988, Chapter 210

38 **39-6-72**, as enacted by Laws of Utah 1988, Chapter 210

39 **39-6-73**, as enacted by Laws of Utah 1988, Chapter 210

40 **39-6-74**, as enacted by Laws of Utah 1988, Chapter 210

41 **39-6-75**, as enacted by Laws of Utah 1988, Chapter 210

42 **39-6-76**, as enacted by Laws of Utah 1988, Chapter 210

43 **39-6-77**, as enacted by Laws of Utah 1988, Chapter 210

44 **39-6-78**, as enacted by Laws of Utah 1988, Chapter 210

45 **39-6-79**, as enacted by Laws of Utah 1988, Chapter 210

46 **39-6-80**, as enacted by Laws of Utah 1988, Chapter 210

47 **39-6-81**, as enacted by Laws of Utah 1988, Chapter 210

48 **39-6-82**, as enacted by Laws of Utah 1988, Chapter 210

49 **39-6-83**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9

50 **39-6-84**, as enacted by Laws of Utah 1988, Chapter 210

51 **39-6-85**, as enacted by Laws of Utah 1988, Chapter 210

52 **39-6-86**, as enacted by Laws of Utah 1988, Chapter 210

53 **39-6-87**, as enacted by Laws of Utah 1988, Chapter 210

54 **39-6-88**, as enacted by Laws of Utah 1988, Chapter 210

55 **39-6-89**, as enacted by Laws of Utah 1988, Chapter 210

56 **39-6-90**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9

57 **39-6-91**, as enacted by Laws of Utah 1988, Chapter 210

58 **39-6-92**, as enacted by Laws of Utah 1988, Chapter 210

59 **39-6-93**, as last amended by Laws of Utah 2005, Chapter 2
60 **39-6-94**, as enacted by Laws of Utah 1988, Chapter 210
61 **39-6-95**, as enacted by Laws of Utah 1988, Chapter 210
62 **39-6-96**, as enacted by Laws of Utah 1988, Chapter 210
63 **39-6-97**, as enacted by Laws of Utah 1988, Chapter 210
64 **39-6-98**, as enacted by Laws of Utah 1988, Chapter 210
65 **39-6-99**, as enacted by Laws of Utah 1988, Chapter 210
66 **39-6-100**, as enacted by Laws of Utah 1988, Chapter 210
67 **39-6-101**, as enacted by Laws of Utah 1988, Chapter 210
68 **39-6-102**, as enacted by Laws of Utah 1988, Chapter 210
69 **39-6-103**, as enacted by Laws of Utah 1988, Chapter 210
70 **39-6-104**, as enacted by Laws of Utah 1988, Chapter 210
71 **39-6-105**, as enacted by Laws of Utah 1988, Chapter 210
72 **39-6-106**, as enacted by Laws of Utah 1988, Chapter 210

73
74 *Be it enacted by the Legislature of the state of Utah:*

75 Section 1. Section **39-1-1** is amended to read:

76 **39-1-1. Militia -- How constituted -- Persons exempted.**

77 (1) All able-bodied citizens, and all able-bodied persons of foreign birth who have
78 declared their intention to become citizens, who are 18 years of age or older and younger than
79 45 years of age, who are residents of this state, constitute the militia, subject to the following
80 exemptions:

81 (a) persons exempted by laws of the United States;

82 (b) persons exempted by the laws of this state;

83 (c) all persons who have been honorably discharged from the army, air force, navy,
84 marines, coast guard, or volunteer forces of the United States;

85 (d) active members of any regularly organized fire or police department in any city or
86 town, but no member of the active militia is relieved from duty because of his joining any
87 volunteer fire company or department; and

88 (e) judges and clerks of courts of record, state and county civil officers holding office
89 by election, state officers appointed by the governor for a specified term of office, ministers of

the gospel, practicing physicians, superintendents, and officers and assistants of hospitals[;] and prisons and jails[; ~~conductors, brakemen, flagmen, engineers and firemen of railways, and all other employees of railways actually employed in train service, and~~].

~~[(f) idiots, lunatics, and persons convicted of infamous crime.]~~

(2) All exempted persons, except those enumerated in Subsections (1)(a) through [(f)] (e), are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of these, or after they have voluntarily enlisted in the National Guard of this state.

Section 2. Section **39-1-3** is amended to read:

39-1-3. Governor commander in chief -- Powers and duties.

(1) The governor by virtue of his office shall be commander in chief of the Utah National Guard and of the unorganized militia, and of any portions of the unorganized militia which may [hereafter] be organized. ~~[He shall be empowered and]~~

(2) The governor:

(a) is authorized to issue all [~~such~~] orders, rules and regulations necessary to conform the Utah National Guard to Title 32 of the United States Code in its organization, government, discipline, maintenance, training, equipment, and regulations[~~;-He~~];

(b) shall appoint and commission all officers and select all warrant officers, subject to the provisions of Title 32 of the United State Code; provided, that any [~~such~~] appointee failing to receive federal recognition after having been [~~so~~] notified by the National Guard Bureau, shall revert to status occupied before [~~such~~] the appointment[~~;-He~~];

(c) shall determine and fix the home station and location of the various units of the Utah National Guard[~~;-He~~];

(d) shall provide armories, warehouses, maintenance and repair shops, hangars, small arms, artillery and aircraft ranges, campsites, concentration areas, training facilities, military reservations and arsenals as required for organizations of the Utah National Guard; and

(e) shall furnish suitable offices, or office space for regular army personnel assigned to duties with the Utah National Guard[;], the expenses of which may be paid out of the state military appropriations.

Section 3. Section **39-1-12** is amended to read:

39-1-12. Adjutant general -- Appointment -- Term.

(1) There shall be one adjutant general appointed by the governor. The adjutant general is ~~[chief of staff]~~ the commanding general and holds office for a term of six years, unless terminated by resignation, disability, or for cause as determined by a military court or court-martial.

(2) The person appointed to the office shall:

(a) be a citizen of Utah and meet the requirements provided in Title 32, United States Code~~[. He shall]~~;

(b) be a federally recognized commissioned officer of the National Guard of the United States with no fewer than ~~[+0]~~ five years commissioned service in the Utah National Guard~~[-]~~; and

(c) as determined by the governor, have sufficient knowledge and experience to command the Utah National Guard.

(3) Active service in the armed forces of the United States may be included in ~~[this]~~ the requirement in Subsection (2)(b), if the officer was a member of the Utah National Guard when ~~[he]~~ the officer entered that service.

(4) An officer is no longer eligible to hold the office of adjutant general after ~~[becoming 64]~~ attaining 66 years of age.

Section 4. Section ~~39-6-4~~ is amended to read:

39-6-4. Fraudulently obtained discharge -- Desertion.

(1) A person discharged from the Utah National Guard who is later charged with having fraudulently obtained the discharge is~~[-, subject to Section 39-6-72,]~~ subject to trial by a military court on that charge.

(2) After apprehension, ~~[he]~~ the person is subject to this chapter while in military custody for trial. Upon conviction of that charge ~~[he]~~ the person is subject to trial for all offenses under this chapter committed prior to the fraudulent discharge.

(3) A person who has deserted from a military unit, which act would subject ~~[him]~~ the person to the jurisdiction of this chapter, is not relieved from the jurisdiction of this chapter due to a separation from any later period of service.

Section 5. Section ~~39-6-113~~ is amended to read:

39-6-113. Jurisdiction over offenses.

(1) A member may not be tried or punished by court-martial or non-judicial

punishment respectively for any offense [~~under Sections 39-6-66 through 39-6-106,~~] unless the offense was committed while the member was in a military duty status under Title 32, United States Code, or while on state active duty orders.

(2) Nothing in this section shall limit a commander's authority to use adverse administrative action to address misconduct by a member, regardless of the member's status at the time of the misconduct.

Section 6. Section 39-6-114 is repealed and reenacted to read:

39-6-114. Chapter interpretation -- Federal law governs.

(1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the National Guard not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to Section 39-1-3, apply to and govern the National Guard of this state, including all members on active duty within the state as active duty guard/reserve personnel under U.S.C.A. Title 32, National Guard.

(2) The Uniform Code of Military Justice, 10 U.S.C.A. 47, including regulations, manuals, forms, precedents, and usages implementing, interpreting and complementing the code, is adopted for use by the National Guard of this state and applies as long as it is not inconsistent with:

(a) the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state; or

(b) a rule or regulation adopted pursuant to Section 39-1-3, to govern the National Guard of this state, including all members on active duty within the state as active duty guard/reserve personnel under U.S.C.A. Title 32, National Guard, when the members are serving other than in a federal capacity under U.S.C.A. Title 10.

Section 7. Repealer.

This bill repeals:

Section 39-6-66, **Principal defined.**

Section 39-6-67, **Accessory after the fact.**

Section 39-6-68, **Conviction of lesser included offense or attempt.**

Section 39-6-69, **Attempt.**

183 Section **39-6-70**, Conspiracy.

184 Section **39-6-71**, Solicitation of desertion, mutiny, or other act of misconduct.

185 Section **39-6-72**, Fraudulent enlistment, appointment, or separation.

186 Section **39-6-73**, Unlawful enlistment, appointment, or separation of another.

187 Section **39-6-74**, Desertion.

188 Section **39-6-75**, Absence without leave.

189 Section **39-6-76**, Missing movement.

190 Section **39-6-77**, Contempt toward officials.

191 Section **39-6-78**, Disrespect toward superior officer.

192 Section **39-6-79**, Assault or willful disobedience of an officer.

193 Section **39-6-80**, Assault or willful disobedience of subordinate officer.

194 Section **39-6-81**, Failure to obey order or regulation.

195 Section **39-6-82**, Cruelty -- Maltreatment.

196 Section **39-6-83**, Mutiny -- Sedition.

197 Section **39-6-84**, Breaking arrest or confinement.

198 Section **39-6-85**, Releasing prisoner without proper authority -- Allowing escape.

199 Section **39-6-86**, Unlawful detention.

200 Section **39-6-87**, Delay in disposition of case or noncompliance with chapter.

201 Section **39-6-88**, Forcing a safeguard.

202 Section **39-6-89**, Signing a false record.

203 Section **39-6-90**, Sale, waste, or destruction of military property.

204 Section **39-6-91**, Waste or destruction of nonmilitary property.

205 Section **39-6-92**, Improper hazarding of vessel.

206 Section **39-6-93**, Intoxicated or reckless driving.

207 Section **39-6-94**, Intoxicated on duty -- Sentinel or lookout.

208 Section **39-6-95**, Malingering.

209 Section **39-6-96**, Riot -- Breach of peace.

210 Section **39-6-97**, Provoking speeches or gestures.

211 Section **39-6-98**, Theft -- Wrongful conversion.

212 Section **39-6-99**, Aggravated arson -- Arson.

213 Section **39-6-100**, Extortion.

- 214 Section **39-6-101**, Assault -- Aggravated assault.
- 215 Section **39-6-102**, Housebreaking.
- 216 Section **39-6-103**, Perjury.
- 217 Section **39-6-104**, Fraudulent claim against government.
- 218 Section **39-6-105**, Conduct unbecoming an officer.
- 219 Section **39-6-106**, Acts discrediting National Guard.

Legislative Review Note
Office of Legislative Research and General Counsel